

1  
2  
3  
4  
5  
6  
7  
8  
9  
10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
12

13 UNITED STATES OF AMERICA,

CASE NO. CV-F-02-5574 AWI LJO

14 Plaintiff,

**FINDINGS AND RECOMMENDATIONS ON  
GOVERNMENT'S APPLICATION FOR  
DEFAULT AND FINAL JUDGMENT  
(Doc. 60.)**

15 vs.

16 REAL PROPERTY LOCATED IN TULARE  
17 COUNTY, etc.,

18 Defendants.  
19 \_\_\_\_\_/

**INTRODUCTION**

20 In this real estate forfeiture action, plaintiff the United States of America ("Government") seeks:

- 21 1. Default judgment against the interests of five individuals in five parcels of real property  
22 (collectively "properties") located in Terra Bella, California<sup>1</sup>;  
23 2. Entry of final forfeiture judgment to vest in the Government all right, title and interest  
24 in the properties; and  
25 3. A certificate of reasonable cause pursuant to 28 U.S.C. § 2465.  
26 \_\_\_\_\_

27 <sup>1</sup> The properties' Terra Bella, California addresses are 24990 Avenue 95, 24971 Avenue 95, 10545 Road  
28 240 # A, 26331 Avenue 96, and 10545 Road 240 # B. The Government does not seek forfeiture of a sixth property located  
in Porterville, California and referenced in its May 16, 2002 verified Complaint for Forfeiture In Rem ("complaint").

1 This Court conducted a June 17, 2005 hearing on the Government's ex parte application for the  
2 above relief. Assistant United States Attorney Kristi Culver Kapetan appeared for the Government.  
3 There was no other appearance. As more particularly described below, this Court RECOMMENDS to  
4 grant the Government default judgment, to enter final forfeiture judgment, and to issue a 28 U.S.C. §  
5 2465 certificate of reasonable cause.

6 **BACKGROUND<sup>2</sup>**

7 **The Government's Claims**

8 With is complaint, the Government alleges that during 1994 to August 2002, Roberto Torres,  
9 Sr., Maria Inez Torres, Martha Ramos Torres, Jose Luis Torres Ramos and others conspired to defraud  
10 the Government by submitting false and fraudulent tax returns that sought unentitled refunds. According  
11 to the Government, most of the returns used an Individual Taxpayer Identification Number for  
12 individuals who are neither United States citizens, nationals nor permanent residents. The Government  
13 alleges that the scheme resulted in filing more than 9,000 returns and that the Government lost more than  
14 \$3 million from Internal Revenue Service issuance of fraudulent refunds. The complaint's allegations  
15 arise out of investigation in a parallel criminal action entitled *United States v. Elvia Ruiz, et al.*, Case  
16 No. CR F 02-5101 AWI ("criminal action").

17 \_\_\_\_\_ On May 22, 2002, the properties were posted with a copy of the complaint. On July 16, 2002,  
18 another magistrate judge issued for the properties a seizure warrant, which was filed on July 23, 2002.  
19 With his June 14, 2002 order, the district judge assigned to this action authorized public notice of the  
20 complaint by publication in the Visalia Times Delta, and such publication was on August 2, 2002 with  
21 proof of such publication filed on August 22, 2002.

22 The Government served individuals with notice or attempted notice as follows regarding the  
23 properties.

24 **24990 Avenue 95**

25 Jesus R. Ramos is the recorded owner of 24990 Avenue 95, Terra Bella, CA. On May 23, 2002,  
26 copies of the complaint, notice of complaint, writ on entry, lis pendens and court notices were sent by  
27 \_\_\_\_\_

28 <sup>2</sup> The factual and procedural recitation is derived from the Government's papers and the record in that no  
opposition papers have been filed.

1 certified mail to Jesus R. Ramos at the property's address. On June 13, 2002, the documents were  
2 returned with a notation "unclaimed."

3 On February 18, 2004, Jesus R. Ramos was personally served with copies of the complaint and  
4 notice of complaint.

5 **24971 Avenue 95 And 10545 Road 240 #A**

6 Roberto Torres, Sr. is the recorded owner of 24971 Avenue 95, Terra Bella, CA. Roberto Torres,  
7 Sr. and Maria Inez Torres are the recorded owners of 10545 240 #A, Terra Bella, CA. On May 23, 2002,  
8 copies of the complaint, notice of complaint, writ of entry, lis pendens and court notices were sent  
9 separately by certified mail to Roberto Torres, Sr. and Maria Inez Torres at the properties' addresses.  
10 The papers were returned with notations "no mail receptacle." On May 23, 2002, copies of the  
11 complaint, notice of complaint, writ of entry, lis pendens and court notices were sent separately by  
12 certified mail to Roberto Torres, Sr. and Maria Inez Torres at a Fresno post office box. The documents  
13 were returned with notations "attempted not known."

14 In their May 9, 2003 plea agreements in the criminal action, Roberto Torres, Sr. and Maria Inez  
15 Torres agreed to forfeit the properties. On October 30, 2003, Maria Inez Torres was deported to Mexico  
16 upon completion of her criminal sentence. On May 6, 2004, Roberto Torres, Sr. was personally served  
17 with copies of the complaint and notice of complaint. On that same date, Roberto Torres, Sr. stated that  
18 Maria Inez Torres was in Mexico.

19 \_\_\_\_\_ By a June 8, 2004 Stipulation for Final Judgment of Forfeiture filed in this action, Roberto  
20 Torres, Sr. forfeited his interest in the properties to the Government. By a second June 8, 2004  
21 Stipulation for Final Judgment of Forfeiture filed in this action, the Government recognized Bank of  
22 America as a lien holder as to 24971 Avenue 95 and whose loan balance will be repaid from sale of that  
23 property.

24 On June 14, 2004, the Government by certified international mail sent copies of the complaint,  
25 application and order for publication and court notices to Maria Inez Torres at a Mexican address  
26 provided by her sister. The certified international mail receipt has not been returned to the Government.

27 **26331 Avenue 96**

28 Jose Luis Torres Ramos and Martha Ramos Torres are the recorded owners of 26331 Avenue

1 96, Terra Bella, CA. According to several witnesses, Martha Ramos Torres fled to Mexico on March  
2 14, 2002, the day on which initial search warrants were executed in the criminal action. On May 16,  
3 2002, federal law enforcement officers attempted to personally serve Martha Ramos Torres with the  
4 complaint, notice of complaint and writ of entry at the property. Martha Ramos Torres was not at the  
5 property which appeared abandoned, and documents were left at the property's residence.

6 On May 23, 2002, copies of the complaint, notice of complaint, writ of entry, lis pendens and  
7 court notices were sent separately by certified mail to Jose Luis Torres Ramos and Martha Ramos Torres  
8 at the property's address. The documents were returned with a notation "unclaimed." On May 23, 2002,  
9 copies of the complaint, notice of complaint, writ of entry, lis pendens and court notices were sent by  
10 certified mail to Martha Ramos Torres at a Fresno post office box. The documents were returned with  
11 a notation "attempted not known."

12 On May 6, 2004, Roberto Torres, Sr. stated that Martha Ramos Torres was in Mexico.

13 By a June 14, 2004 Stipulation for Final Judgment of Forfeiture filed in this action, Jose Luis  
14 Torres Ramos forfeited his interest in the property to the Government. On that same date, the  
15 Government by certified international mail sent copies of the complaint, application and order for  
16 publication and court notices to Martha Ramos Torres at a Mexican address provided by her sister. The  
17 certified international mail receipt has not been returned to the Government.

18 By a February 15, 2005 Stipulation for Final Judgment of Forfeiture filed in this action, the  
19 Government recognized claimant Grand Servicing Corporation as a lien holder whose loan balance will  
20 be repaid from sale of the property.

21 **10545 Road 240 #B**

22 Jose B. Torres, Jose Torres and Oralia Torres are the recorded owners of 10545 240 #B.<sup>3</sup> On  
23 May 23, 2002, copies of the complaint, notice of complaint, writ of entry, lis pendens and court notices  
24 were sent by certified mail to Jose B. Torres at the property's address. The documents were returned  
25 with a notation "unclaimed." Also on May 23, 2002, copies of the complaint, notice of complaint, writ

---

26 <sup>3</sup> By a grant deed recorded May 15, 2002 in Tulare County, Jose B. Torres, a single man, and Jose Torres  
27 and Oralia Torres, husband and wife, and the three of them as joint tenants, granted the property to Erasmo Ramos and Perla  
28 Sierra Ramos, husband and wife, as joint tenants. By a granted deed recorded June 4, 2002, Erasmo Ramos and Perla Sierra  
Ramos granted the property to the Government.

1 of entry, lis pendens and court notices were sent separately by certified mail to Jose Torres and Oralia  
2 Torres at a Waterford, California address. The return receipts bear Octavio Torres' May 30, 2002  
3 signature for Jose Torres' certified mail and Oralia Torres' June 12, 2002 signature for her certified mail.

4 Jose B. Torres and Araceli Saldana filed July 3, 2002 claims as to the property and July 23, 2002  
5 answers to the complaint. On February 18, 2004, Oralia B. Torres was personally served with the  
6 complaint and notice of complaint. On March 11, 2003, Jose B. Torres informed law enforcement  
7 officers that his father, Jose Torres, had passed away two months prior.

8 On June 7, 2004, Erasmo Ramos and Perla Sierra Ramos were personally served with the  
9 complaint and notice of complaint. By an April 5, 2005 Stipulation for Final Judgment of Forfeiture  
10 filed in this action, Jose B. Torres, Oralia B. Torres and Araceli Saldana forfeited their interests in the  
11 property to the Government.

#### 12 **The Government's Request For Ex Parte Hearing**

13 According to the Government, except as noted above, no one has asserted a claim as to the  
14 properties. At the Government's request, this Court's clerk has entered defaults against Jesus R. Ramos,  
15 Maria Inez Torres, Martha Ramos Torres, Erasmo Ramos and Pearla Sierra Ramos. On April 22, 2005,  
16 the Government filed its ex parte application for its requested default judgment and final forfeiture  
17 judgment, pursuant to this Court's Local Rule A-540(d) which addresses default in actions in rem and  
18 states:

19 Upon a showing that no one has appeared to claim the property and give security, and  
20 that due notice of the action and arrest of the property has been given, a party may move  
21 for judgment at any time after the time for answer has expired. . . . If no one has  
22 appeared, the party may have an ex parte hearing before the Court and judgment without  
23 further notice. If any person has appeared and does not join in the motion for judgment,  
24 such person shall be given seven (7) court days notice of the motion . . . provided,  
25 however, that the Court can extend or shorten the time of the required notice on good  
26 cause.

27 According to its certificate of service, the Government has served only Bank of America with its ex parte  
28 application. No one has filed timely opposition papers.

#### 26 **DISCUSSION**

##### 27 **Notice Requirements**

28 The Government contends notice requirements have been satisfied for forfeiture of the properties.

1 The Fifth Amendment's Due Process Clause prohibits the Government to deprive property without "due  
2 process of law." Individuals whose property interests are at stake are entitled to "notice and an  
3 opportunity to be heard." *United States v. James Daniel Good Real Property*, 510 U.S. 43, 48, 114 S.Ct.  
4 492 (1993).

5 To initiate a civil forfeiture action against real property, the Government must post notice of the  
6 complaint of the property and serve notice and a copy of the complaint on the property owner. 18 U.S.C.  
7 § 985(c)(1). If the property has been posted, "it shall not be necessary for the court to issue an arrest  
8 warrant in rem, or to take any other action to establish in rem jurisdiction over the property." 18 U.S.C.  
9 § 985(c)(2). As noted by the Government, a magistrate judge properly issued a seizure warrant for the  
10 properties and which was filed July 23, 2002 to indicate the properties were posted on May 22, 2002.  
11 As such, no issue is raised as to posting the properties.

12 As noted by the Government, the Supplemental Rules for Certain Admiralty and Maritime  
13 Claims ("Supplemental Rules") apply to this real property forfeiture action. *See United States v. Real*  
14 *Property*, 135 F.3d 1312, 1315 (9<sup>th</sup> Cir. 1998). Supplemental Rule C(4) "requires the Government to  
15 give notice of forfeiture proceedings by publication alone." *Real Property*, 135 F.3d at 1315. This  
16 Court's Local Admiralty and In Rem Rules echo Supplemental Rule C(4)'s notice of forfeiture action  
17 by court-ordered publication in a newspaper of general circulation in the district where the action is filed.  
18 *See* Local Rule A-530 (incorporating Local Rule 83-171 by which court is to designate appropriate  
19 newspaper and manner of publication).

20 The district judge's June 14, 2002 order required notice by publication in the Visalia Times  
21 Delta, and the Government satisfied the order with August 2, 2002 publication of the notice of  
22 complaint.

23 Although Supplemental Rule C(4) requires only notice by publication, 28 U.S.C. § 985(c)(1)(C)  
24 requires the Government to initiate a civil forfeiture action against real property by "serving notice on  
25 the property owner, along with a copy of the complaint." The United States Supreme Court has held that  
26 notice by publication is insufficient for persons with a known potential interest in the property and  
27 whose whereabouts are known. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313,  
28 70 S.Ct. 652 (1950). For such persons, the Government must attempt to provide actual notice by means

1 “‘reasonably calculated under all circumstances’ to apprise [the person] of the pendency of the . . .  
2 forfeiture[.]” *Dusenbery v. United States*, 534 U.S. 161, 168, 122 S.Ct. 694 (2002).

3 This Court’s Local Rule A-540 addresses notice to persons known to have an interest in property  
4 subject to forfeiture. The rule requires that a party seeking default judgment in an action in rem to show  
5 to the Court’s satisfaction that due notice and posting of the property has been given by: (1) publication;  
6 (2) if the property is in the hands of a law enforcement officer, by personal service on the person having  
7 custody prior to its possession by law enforcement agency or officer; and (3) by personal service or  
8 certified mail, return receipt requested, to every other person who has not appeared in the action and is  
9 known to have an interest in the property; provided that failure to give actual notice to such other person  
10 may be excused upon a satisfactory showing of diligent efforts to give such notice without success.  
11 Local Rule A-540(a).

12 Here, the Government’s publication satisfied the Supplemental Rules. As to 24990 Avenue 95,  
13 recorded owner Jesus R. Ramos was personally served. No notice issues arise for this property.

14 As to 24971 Avenue 95, recorded owner Roberto Torres, Sr. was personally served and  
15 forfeited his interest in the property by stipulation. In addition, in her plea agreement, Maria Inez Torres  
16 agreed to forfeit her interest in the property. No notice issues arise for this property.

17 As to 10545 Road 240 #A, recorded owner Roberto Torres, Sr. was personally served and  
18 forfeited his interest in the property by stipulation. Recorded owner Maria Inez Torres agreed to forfeit  
19 her interest in the property in her plea agreement and was deported to Mexico. The Government has  
20 diligently attempted to serve Maria Inez Torres in the United States and Mexico based on available  
21 information. No notice issues arise for this property.

22 As to 26331 Avenue 96, recorded owner Jose Luis Torres Ramos forfeited his interest in the  
23 property by stipulation. The Government diligently attempted to serve recorded owner Martha Ramos  
24 Torres personally and by certified mail although she reportedly fled to Mexico. The Government has  
25 diligently attempted to serve her in Mexico based on available information. No notice issues arise for  
26 this property.

27 As to 10545 Road 240 #B, return receipts were signed and returned for certified mail service  
28 upon recorded owners Jose Torres, who has passed away, and Oralia B. Torres, who also personally was

1 served. Recorded owner Jose B. Torres and Araceli Saldana appeared in this action. By stipulation, Jose  
2 B. Torres, Oralia B. Torres and Araceli Saldana forfeited their interests in the property. Erasmo Ramos  
3 and Perla Sierra Ramos were personally served and deeded the property to the Government. No notice  
4 issues arise for this property.

5 **Default Entry**

6 In an in rem civil forfeiture action, Supplemental Rule C(6) grants a person who claims a right  
7 or interest in the property to file a verified claim to identify the interest or right within 30 days of the  
8 earlier of date of service of the Government's complaint or completion of publication. "[F]ailure to  
9 comply with the requirements of Supplemental Rule C(6) precludes [a person] from establishing  
10 standing as a party to the forfeiture action." *Real Property*, 135 F.2d at 1317.

11 Although personally served more than 30 days ago, Jesus R. Ramos, Erasmo Ramos and Pearla  
12 Sierra Ramos have not appeared to warrant default entry against them. Moreover, 30 days have passed  
13 since attempted service on Maria Inez Torres and Martha Ramos Torres without their appearance to  
14 warrant default entry against them.

15 **Default Judgment And Final Forfeiture Judgment**

16 The Government seeks judgment against interests of potential claimants and final forfeiture  
17 judgment to vest in the Government all right, title and interest in the properties. The Supplemental Rules  
18 do not provide a procedure to seek default judgment. Supplemental Rule A provides: "The general  
19 Rules of Civil Procedure for the United States District Courts are also applicable to the foregoing  
20 proceedings except to the extent that they are inconsistent with these Supplemental Rules."

21 Default entry is a prerequisite to default judgment. F.R.Civ.P. 55(a) governs entry of default:  
22 "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise  
23 defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall  
24 enter the party's default." Generally, the default entered by the clerk establishes a defendant's liability:

25 Rule 55 gives the court considerable leeway as to what it may require as a  
26 prerequisite to the entry of a default judgment. "The general rule of law is that upon  
27 default the factual allegations of the complaint, except those relating to the amount of  
28 damages will be taken as true." (citations omitted). *Geddes v. United Financial Group*,  
559 F.2d 557, 560 (9<sup>th</sup> Cir. 1977).



1 *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917-918 (9<sup>th</sup> Cir. 1987).

2 As noted above, the Government properly sought default entries against the interests of Jesus R.  
3 Ramos, Maria Inez Torres, Martha Ramos Torres, Erasmo Ramos and Pearla Sierra Ramos. There is  
4 no impediment to default judgment sought by the Government as to them. The Government has entered  
5 into stipulations for final judgment of forfeiture with Roberto Torres, Sr., Jose Luis Torres Ramos, Jose  
6 B. Torres, Oralia B. Torres, Araceli Saldana, Bank of America and Grand Servicing Corporation.  
7 Nonetheless, the Government seeks judgment against the interests of the entire world, that is, a final  
8 forfeiture judgment to vest in the Government all right, title and interest in the properties. "A judgment  
9 in rem affects the interests of all persons in designated property. . . . [T]he plaintiff is seeking to secure  
10 a pre-existing claim in the subject property and to extinguish or establish the nonexistence of similar  
11 interests of particular persons." *Hanson v. Denckla*, 357 U.S. 235, 246, n. 12, 78 S.Ct. 1228 (1958).

12 In light of the defaults and stipulations for final judgment noted above, a final forfeiture  
13 judgment is in order for the Government.

14 **Certificate Of Reasonable Cause**

15 The Government asks this Court to issue a certificate of reasonable cause under 28 U.S.C. §  
16 2465(a) which provides in pertinent part:

17 Upon entry of a judgment for the claimant in any proceeding to . . . forfeit  
18 property seized or arrested under any provision of Federal law –

19 . . .

20 (2) if it appears that there was reasonable cause for the seizure or arrest, the court  
21 shall cause a proper certificate thereof to be entered and, in such case, neither the person  
who made the seizure or arrest nor the prosecutor shall be liable to suit or judgment on  
account of such suit or prosecution nor shall the claimant be entitled to costs . . .

22 In *United States v. Frerichs*, 106 U.S. 160, 161-162 (1882), the United States Supreme Court  
23 explained the effect of a certificate of reasonable cause:

24 The certificate, when granted, is no part of the original case. It is a collateral matter  
25 which arises after final judgment. It is granted to protect the person at whose instance  
the seizure was made, should an action of trespass be brought against him by the  
26 claimant for the wrongful seizure of the latter's property. The granting of the certificate  
of reasonableness cause is, therefore, only antecedent and ancillary to another suit, and  
is not a final judgment in the case in which it is given.

27 Under the circumstances, a issuance of a certificate of reasonableness is reasonable and  
28

warranted to protect the Government officers involved.

**CONCLUSION AND RECOMMENDATIONS**

For the reasons discussed above, this Court RECOMMENDS to:

1. GRANT the Government default judgment against the interests of Jesus R. Ramos, Maria Inez Torres, Martha Ramos Torres, Erasmo Ramos and Pearla Sierra Ramos in the properties;
2. ENTER final forfeiture judgment to vest in the Government all right, title and interest in the properties subject to interests of claimants Bank of America as to 24971 Avenue 95 and Grand Servicing Corporation as to 26331 Avenue 96;
3. ISSUE a 28 U.S.C. § 2465 certificate of reasonable cause; and
4. ORDER the Government, within 10 days of service of an order adopting findings and recommendations, to submit a proposed final forfeiture judgment and a 28 U.S.C. § 2465 certificate of reasonable cause consistent with the findings and recommendations and order adopting them.

These findings and recommendations are submitted to the district judge assigned to this action, pursuant to 28 U.S.C. § 636(b) and this Court's Local Rule 72-304. No later than July 1, 2005, any party may file written objections with the Court and serve a copy on the magistrate judge in compliance with this Court's Local Rule 72-304(b). Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Responses to objections shall be filed and served no later than July 8, 2005 and otherwise in compliance with this Court's Local Rule 72-304(d). A copy of the responses shall be served on the magistrate judge. The district judge will review the magistrate judge's findings and recommendations pursuant to 28 U.S.C. § 636(b). The parties are advised that failure to file objections within the specified time may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

**Dated: June 19, 2005**  
66h44d

**/s/ Lawrence J. O'Neill**  
**UNITED STATES MAGISTRATE JUDGE**